

HOUSE BILL NO. 106

INTRODUCED BY J. MANGAN

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTY FOR A PERSON DISTRIBUTING OR MANUFACTURING A DANGEROUS DRUG AT A PLACE WHERE DAY CARE FOR CHILDREN IS PROVIDED; AND AMENDING SECTIONS 45-9-101, 45-9-110, AND 46-18-205, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal distribution of dangerous drugs. (1) A person commits the offense of criminal distribution of dangerous drugs if the person sells, barter, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal distribution of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined an amount of not more than \$50,000, except as provided in 46-18-222.

(3) A person convicted of criminal distribution of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for criminal distribution of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined an amount of not more than \$50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal distribution of such a drug, the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined an amount of not more than \$50,000, except as provided in 46-18-222.

(4) A person convicted of criminal distribution of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than \$50,000, or both.

(5) A person who was an adult at the time of distribution and who is convicted of criminal distribution of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for

1 a term of not less than 4 years or more than life and may be fined an amount of not more than \$50,000,
2 except as provided in 46-18-222.

3 (b) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II
4 pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a distribution, the person shall
5 be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined
6 an amount of not more than \$50,000, except as provided in 46-18-222.

7 (c) If convicted of the distribution of a dangerous drug included in Schedule I or Schedule II
8 pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such distributions, the
9 person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and
10 may be fined an amount of not more than \$50,000, except as provided in 46-18-222.

11 (d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for
12 a term of not less than 2 years or more than life and may be fined an amount of not more than \$50,000,
13 except as provided in 46-18-222.

14 (6) A person convicted of criminal distribution of dangerous drugs at a place where day care, as
15 defined in 52-2-703, is provided shall be imprisoned in the state prison for a term of not less than 3 years
16 or more than life and may be fined an amount of not more than \$50,000, except as provided in
17 46-18-222.

18 ~~(6)(7)~~ Practitioners and agents under their supervision acting in the course of a professional
19 practice, as defined by 50-32-101, are exempt from this section."
20

21 **Section 2.** Section 45-9-110, MCA, is amended to read:

22 **"45-9-110. Criminal production or manufacture of dangerous drugs.** (1) A person commits the
23 offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely
24 produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in
25 50-32-101.

26 (2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in
27 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for
28 a term of not less than 5 years or more than life and may be fined an amount of not more than \$50,000,
29 except as provided in 46-18-222.

30 (3) A person convicted of criminal production or manufacture of a dangerous drug included in

1 Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has
2 a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule
3 II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and
4 may be fined an amount of not more than \$50,000, except as provided in 46-18-222. Upon a third or
5 subsequent conviction that has become final for criminal production or manufacture of a Schedule I or
6 Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years
7 or more than life and may be fined an amount of not more than \$50,000, except as provided in
8 46-18-222.

9 (4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol,
10 or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for
11 a term not to exceed 10 years and may be fined an amount of not more than \$50,000, except that if the
12 dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more
13 than 30, the person shall be imprisoned in the state prison for a term of not less than 2 years or more than
14 life and may be fined an amount of not more than \$50,000. "Weight" means the weight of the dry plant
15 and includes the leaves and stem structure but does not include the root structure. A person convicted
16 under this subsection who has a prior conviction that has become final for criminal production or
17 manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to
18 exceed twice that authorized for a first offense under this subsection and may be fined an amount of not
19 more than \$100,000.

20 (5) A person convicted of criminal production or manufacture of dangerous drugs at a place where
21 day care, as defined in 52-2-703, is provided shall be imprisoned in the state prison for a term of not less
22 than 3 years or more than life and may be fined an amount of not more than \$50,000, except as provided
23 in 46-18-222.

24 ~~(5)(6)~~ Practitioners and agents under their supervision acting in the course of a professional
25 practice, as defined in 50-32-101, are exempt from this section."

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27 **Section 3.** Section 46-18-205, MCA, is amended to read:

28 **"46-18-205. Mandatory minimum sentences -- restrictions on deferral or suspension.** (1) If the
29 victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of
30 imprisonment imposed under the following sections may not be deferred or suspended and the provisions

1 of 46-18-222 do not apply to the first 30 days of the imprisonment:

2 (a) 45-5-503, sexual intercourse without consent;

3 (b) 45-5-504, indecent exposure;

4 (c) 45-5-505, deviate sexual conduct; or

5 (d) 45-5-507, incest.

6 (2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
7 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

8 (a) 45-5-103(4), mitigated deliberate homicide;

9 (b) 45-5-202, aggravated assault;

10 (c) 45-5-302(2), kidnapping;

11 (d) 45-5-303(2), aggravated kidnapping;

12 (e) 45-5-401(2), robbery;

13 (f) 45-5-502(3), sexual assault;

14 (g) 45-5-503(2) and (3), sexual intercourse without consent;

15 (h) 45-9-101(2), (3), ~~and~~ (5)(d), and (6) criminal distribution of dangerous drugs;

16 (i) 45-9-102(4), criminal possession of dangerous drugs; ~~and~~

17 (j) 45-9-103(2), criminal possession with intent to distribute dangerous drugs; and

18 (k) 45-9-110(5), criminal production or manufacture of dangerous drugs.

19 (3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a
20 sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or
21 suspended."

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